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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/330,963
Filing Date: June 11, 1999
Appellant(s): MCNUTT ET AL.

**MAILED
DEC 31 2007
GROUP 3700**

Richard Earl McNutt et al.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 7, 2007 and October 16, 2007
appealing from the Office action mailed November 13, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

The brief identifies ODS Properties, Inc, the assignee of rights in the present application as the party of interest.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

This appeal involves rejected claims 1-9, 11-12, 15-25, 27-28, & 31-94. Claims 10, 13, -14, 26, & 29-30 were previously canceled.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct. No amendments have been submitted in reply to the November, 13, 2006 Office Action.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Dahl	WO 1997/28636 A1	August 7, 1997
Remillard	US 5,404,393 A	April 4, 1995
Brenner et al.	US 5,830,068 A	November 3, 1998
Sakanishi et al.	US 5,042,063 A	August 20, 1991

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-9, 11, 15-25, 27, 31-42, 44-55, & 57-94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dahl (PCT WO 97/28636) in view of Brenner et al (US 5,830,068).

Claims 1-2, 17-18, 33-34, and 46-47: Dahl discloses a method and means for providing a wagering service via an interactive telecommunications network or system (Abstract). The system comprises of a central gambling station that is connected to

player terminals via interfaces within the network. The gambling station establish connections with calling players, checks the player identities, checks players accounts in respective bank accounts (database corresponding to wager accounts), collects user inputs respective of played games, and transmits game instructions to and from the individual players. The gambling station provides two-way communications to banks, gambling authorities, players, etc. through a public telephone network, direct transmission lines, television links (Pg. 1:34-Pg. 2:15). Dahl system discloses three different type of wagering interface systems. Dahl discloses an interactive voice response system that receives a voice prompts to a potential player and the player responds via a telephone by transmitting wagering data such as wagering account information (Pg. 5:5-Pg. 6:10). Dahl discloses a computer wagering control system that receives wagering account information from a player via personal computer (Pg. 7:1-5). Dahl further discloses teaches a television control system that comprises of a television & telephone interface, wherein a player can input wagering information via the telephone and visually see wagering and gaming information via the television (Pg. 5:5-Pg. 6:10). Dahl incorporates by reference (Remillard US 5,404,393) that interactive television terminals with set-top boxes are well known in the art. Dahl discloses that the gambling system establishes two-way communications via television links, telephone networks, and direct transmission lines. Dahl further discloses that interactive telecommunication systems earlier known in the art may also be included to the system without extending the scope of the said invention (Pg. 2:35-Pg. 3:1). Brenner discloses a television wagering control system that provides data relative to a single wagering

account to television distribution system and receives wagering information from a television wagering terminal that comprises of a set-top box and a television (Col. 3:35-45, Col. 6:55-63, Col. 7:35-54, Col. 15:26-35, Col. 19:35-51, Figs 1 & 29). Brenner discloses that such a system/interface decreases the amount of connect time via telephone lines and provide more information to the player via the television (Col. 1:35-Col. 2:29). It would have been obvious to one of ordinary skill at the time of the invention to modify the television wagering terminal of Dahl with the set-top wagering terminal of Brenner for the purposes and advantages of the above.

Claims 3, 19, 35, 48, 61, 70, 79, & 88: Brenner discloses the television distribution system being a cable system (Col. 6:55-63).

Claims 4, 20, 36, 49, 62, 71, 80, & 89: Brenner discloses the television distribution system being a satellite television system (Col. 6:55-63).

Claims 5, 21, 37, 50, 63, 72, 81, & 90: Brenner discloses the television wagering terminal being a cable television set-top box (Col. 7:5-20, Col. 21:15-20, Fig. 30).

Claims 6, 22, 38, 51, 64, 73, 82, & 91: Brenner discloses the television wagering terminal being a satellite television receiver (Col. 7:5-20).

Claims 7, 23, 39, 52, 65, 74, 83, & 92: Brenner discloses the television wagering control system receiving the wager information from the television wagering terminal via a telephone system connection (Col. 7:35-53, Col. 19:35-50).

Claims 8, 24, 40, 53, 66, 75, 84, & 93: Brenner discloses the television wagering control system receiving the wager information from the television wagering terminal via a cable system connection (Col. 19:35-50, Fig. 29 (376)).

Claims 9, 25, 41, 54, 67, 76, 85, & 94: Brenner discloses the television wagering terminal control system receiving the wager information from the television wagering terminal via a computer network connection (Col. 7:35-53, Col. 19:35-50).

Claims 11, 27, 42, & 55: Dahl discloses the interactive voice response control system receiving wager information as signals generated in response to one or more telephone key depressions (Pg. 5:5-Pg. 6:10).

Claims 15, 31, 44, 57, 59-60, 68-69, 77-78, & 86-87: Dahl discloses the computer wagering control system providing the data relating to the single wagering account to the external computer and receiving the wager information from the external computer, through a telephone connection to the external computer via the Internet (Pg. 7: 1-4, Pg. 10:27-Pg. 11:6).

Claims 16, 32, 45, & 58: Dahl discloses the computer wagering control system providing the data relating to the single wagering account to the external computer and receiving the wager information from the external computer, through a telephone connection to the external computer (Pg. 7: 1-4, Pg. 10:27-Pg. 11:6). It's well known that a telephone can be in the form of wired or wireless telephone. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to allow interaction communication through a wireless communication in order to allow all types of user interfaces to access the system.

Claims 12, 28, 43, & 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dahl (PCT WO 97/28636) in view of Brenner et al (US 5,830,068) in further view of Sakanishi et al (US 5,042,063).

Claims 12, 28, 43, & 56: Dahl in view of Brenner meets all the limitations as disclosed above, but excludes the interactive voice response control system receiving wager information as commands that are spoken by a caller. However, voice response systems that translate spoken words into commands are well known in the art. Dahl discloses that the gambling system establishes two-way communications via television links, telephone networks, and direct transmission lines. Dahl further discloses that interactive telecommunication systems earlier known in the art may also be included to the system without extending the scope of the said invention (Pg. 2:35-Pg. 3:1). Sakanishi discloses a telephone apparatus wherein a person does not have to press key to make calls but can simply say the dial commands. The telephone translates the utterances into dial commands (Abstract). It would have been obvious to one of ordinary skill at the time of the invention to modify the system of Dahl in view of Brenner such that not is wagering data (numbers) keyed in via a telephone, but can be verbally spoken as well, as taught by Sakanishi. Such a modification would provide an alternative means for telephone users that do not want to press any keys.

(10) Response to Argument

A. The difference between Dahl and Appellants' claimed invention is that Dahl fails to disclose a television wagering control system that receives wagering information from a television wagering terminal argument

Dahl discloses a television control system that comprises of a television & telephone interface, wherein a player can input wagering information via the telephone

and visually see wagering and gaming information via the television (Pg. 5:5-Pg. 6:10). The combination is interpreted as a **television wagering terminal**, wherein a player inputs wagering information via the telephone and receives wagering and gaming information via the television from the central gambling station. The central gambling station provides two-way communications to banks, gambling authorities, players, etc. through a public telephone network, direct transmission lines, **television links** (Pg. 1:34-Pg. 2:15). However, Examiner agrees that the Dahl reference fails to disclose explicitly a television wagering control system that receives **wagering information from a television wagering terminal e.g. via television lines**. Dahl is clear on, but limited to, only using one-way television lines with respect to the television wagering terminal disclosed.

In regards to Remillard (US 5,404,393), Examiner agrees that Dahl does not incorporate by reference Remillard. However, Remillard is used as an example of prior art earlier known that uses television sets as a means for a player to participate in different activities (PG. 1:7-12). Furthermore, Dahl stating that, "methods or systems which allow prosecution of a binding participation in a game, and in particular in a game about money via interactive telecommunication systems are not earlier known" doesn't have any bearing in regards to Remillard teaching an example of which television sets are used for participation in activities in general. Furthermore, Appellants states that they, "**do not disagree that interactive television terminals are known prior to appellants' invention.**" Regardless, it is clear that Dahl does disclose using television links to establish some type of communication.

In regards to Appellants' disagreement to Examiner's statement that "Dahl further discloses that interactive telecommunication systems earlier known in the art may also be included to the system without extending the scope of the said invention" (Office Action, page 3, lines 17-19). Dahl states the following,

"Finally it should be mentioned that earlier developed details and prior art technique assumed known within this art and relating to interactive telecommunication systems, art not shown in the figures to avoid unnecessary complex examples. Thus a lot of details and techniques earlier known in connection with interactive telecommunication systems may also be included in the system without extending the scope of the present invention."

In regards to the above, the Examiner interpreted the disclosure to indicate that an artisan skilled in the art can include details and techniques earlier known in the art and relating to interactive telecommunication systems. Therefore, interactive television terminals similar to Remillard (example of prior art disclosed by Dahl) could be included or at least such disclosure would motivate one skilled in the art to combine a television wagering terminal (Brenner) with Dahl.

B. The difference between Brenner and Appellants' claimed invention is that Brenner does not disclose using a plurality of types of user interface systems where one is a television wagering control system and at least another is either an interactive voice response control system or a computer wagering control system argument

Examiner agrees that Brenner clearly teaches an interactive wagering system and process that discloses transmitting data to a television distribution system and receiving wagering information from a television terminal. Examiner agrees that Brenner is silent to at least one other type of user interface for wagering.

C. One of ordinary skill in the art would not find it obvious to modify Dahl to achieve appellants' claimed invention

In general Appellant argues "that one of skill in the art would not find it obvious to modify Dahl to include the set-top box wagering terminal of Brenner." In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, Dahl sites an example of prior art (Remillard US 5,404,393) disclosing that interactive television terminals with set-top boxes, such as Remillard are well known in the art. **Dahl discloses that the gambling system is adapted to establish partly one-way, partly two-way communications via television links, telephone networks, and direct transmission lines (Pg. 2:35-Pg. 2:35-Pg. 3:1).** Although it is not explicitly disclosed how the system establishes two-way

communication via television links, it is clearly implied that it is capable of such. Dahl further discloses that interactive telecommunication systems earlier known in the art may also be included to the system without extending the scope of the said invention (Pg. 2:35-Pg. 3:1). To elaborate Dahl states the following,

“Finally it should be mentioned that earlier developed details and prior art technique assumed known within this art and relating to interactive telecommunication systems, art not shown in the figures to avoid unnecessary complex examples. Thus a lot of details and techniques earlier known in connection with interactive telecommunication systems may also be included in the system without extending the scope of the present invention.”

In regards to the above, the Examiner interpreted the disclosure to indicate that an artisan skilled in the art can include details and techniques earlier known in the art and relating to interactive telecommunication systems. Therefore, interactive television terminals similar to Remillard (example of prior art disclosed by Dahl) could be included or at least such disclosure would motivate one skilled in the art to combine a television wagering terminal (Brenner) with Dahl. In the general the above was used to establish a motivation for one skilled in the art to combine the references of Dahl in view of Brenner e.g. to combine Dahl with a television wagering terminal.

Dahl discloses a television control system that comprises of a television & telephone interface, wherein a player can input wagering information via the telephone and visually see wagering and gaming information via the television (Pg. 5:5-Pg. 6:10).

Examiner interprets this embodiment/combination to be a television wagering

terminal. Brenner discloses a television wagering control system that provides data relative to a single wagering account to television distribution system and receives wagering information from a television wagering terminal that comprises of a set-top box and a television (Col. 3:35-45, Col. 6:55-63, Col. 7:35-54, Col. 15:26-35, Col. 19:35-51, Figs 1 & 29). Brenner doesn't explicitly disclose, but implies that such a system/interface decreases or eliminates the amount of connect time via telephone lines, and Brenner discloses that such a system provides more information to the player via the television (Col. 1:35-Col. 2:29). To elaborate on this, Brenner teaches in the background a television wagering terminal that consists of a telephone and a LCD display (**similar to Dahl's wagering terminal**) (Col. 1:39-41). Brenner goes on to disclose that using such terminal monopolizes the users' telephone line at certain times (Col. 1:48-50). Brenner discloses that such terminals must provide a large number of simultaneous telephone connections to service each of the terminals and that these systems are unwieldy because of the extended connect time of each user (Col. 1:58-64) e.g. difficult to manage because of the congestion. Furthermore, Brenner discloses that the amount of wagering information provided to the user is somewhat limited (Col. 1:65-Col. 2:12). The television wagering terminal system of Brenner fixes such problem, by providing a terminal that provides wagering data to the terminals by using a medium other than telephone lines (Col. 2:13-16, inherently cuts down on telephone line usage) and provides more wagering information to the terminals via a television (Col. 2:17-27). At least in this regards it is clear as to the advantages of Brenner. The above makes clear of record as to the motivations and advantages of why one of ordinary skilled in

the art at the time of the invention was made would have been motivated to modify Dahl's interactive television wagering system with the television wagering terminal of Brenner.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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